

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Criminal Action 2:07-cr-0026

Judge Marbley

EARL GEORGE BROWN,

Defendant.

REPORT AND RECOMMENDATION CONCERNING
DEFENDANT'S INTENT TO PLEAD GUILTY

The United States of America and defendant entered a plea agreement by which the defendant would enter a plea of guilty to Count One of the indictment. The Court's record includes that written plea agreement. The defendant, acting with the assistance of counsel, expressly waived his right to appear before a District Judge and consented to enter a guilty plea before the Magistrate Judge. See *United States v. Cukaj*, 2001 WL 1587410, at *1 (6th Cir. 2001); *United States v. Torres*, 258 F.3d 791, 796 (8th Cir. 2001); *United States v. Dees*, 125 F.3d 261, 263-69 (5th Cir. 1997); *United States v. Ciapponi*, 77 F.3d 1247, 1251 (10th Cir. 1996); *United States v. Williams*, 23 F.3d 629, 632-34 (2nd Cir. 1994).

The Court has conducted the colloquy required by Fed.R.Crim.P. 11(b)(1) and has determined, as explained on the record, that the defendant's plea is knowing and voluntary, free from coercion, and has a factual basis, as required by Fed.R.Civ.P. 11(b)(2) and (3). The defendant was also advised that the Court may accept or reject the plea agreement and that, if the Court rejects it, he may not withdraw

his guilty plea.

It is therefore **RECOMMENDED** that defendant's guilty plea be accepted. Decision on acceptance or rejection of the plea agreement was deferred for consideration by the District Judge after the preparation of a presentence investigation report.

In accordance with S.D. Ohio Crim. R. 32.1, and agreed to by defendant Brown through counsel, a written presentence investigation report will be prepared by the United States Probation Office. Defendant Brown will be asked to provide information and his attorney may be present if defendant wishes. Objections to the presentence report must be made in accordance with the Rules of this Court.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within ten (10) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within ten (10) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

/s/ Terence P. Kemp
United States Magistrate Judge